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10/562,025	12/22/2005	Keith James Hensel	BRE0308U	5549

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MICHAEL MOLINS
MOLINS & CO.
SUITE 5, LEVEL 6
139 MACQUARIE ST
SYDNEY NSW, 2000
AUSTRALIA

EXAMINER	
PAIK, SANG YEOP	
ART UNIT	PAPER NUMBER
3742	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/562,025	HENSEL, KEITH JAMES	
	Examiner	Art Unit	
	SANG Y. PAIK	3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 February 2011*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *21,22,26-29 and 37* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *21,22,26-29 and 37* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 21 and 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison et al (US 5,495,795) in view of Knapp (US 2,289,656) or Doering (US 2,590,237), and Prudhomme (US 5,317,964) or Nejat-Bina (US 5,636,923), and Rackov et al (US 5,524,906).

Harrison shows an electric juicing device having a lid/cap made of plastic with an opening for a feed tube, the cap having a smooth and continuous surface that extends to a pulp exit area, a rotating grating disk, second gap created between a pulp collector and a descending rim of the cap (shown in Figure 2). But, Harrison does not show the feed tube that is of a metal feed tube and the recited gasket.

Knapp or Doering shows it is known in the art that a tube is attached to a lid having an opening thereon. Kanpp further shows the tube having a flange (38, 40) that is affixed to the cap with a plurality of fasteners extending through the flange and a juice stopping rim that is inclined slightly such that a tapered gap is most narrow at the bottom with respect to a descending rim of the cap. Doering also shows the lid/cap (37) having a vertical rim that receives a feed chute (39). Prudhomme or Nejat-Bina shows

that it is well known in the art to provide food processing apparatus with its assembled members that are made of plastics or metal such stainless steel.

Rackov shows it is well known to provide a gasket having a neck and a surrounding ring to receive a plurality of fasteners that engage with a flange of adjoining members.

In view of Knapp or Doering, and Prudhomme or Nejat-Bina, it would have been obvious to one of ordinary skill in the art to provide Harrison with a plastic, which is known to be produced with polymerization, and the a feed tube made of metal since it is known to provide food apparatus that is made of plastic or metal as an alternative materials that is known to provide a clean and yet corrosion resistant structure, and it would also have been obvious to further provide with a tapered gap to alternatively seal off any overflowing juice; and in view of Rackov, it would have been obvious to further adapt with the recited gasket to ensure a liquid tight seal between the feed tube and the cap member.

3. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison in view of Knapp or Doering, Prudhomme or Nejat-Bina, and Rackov as applied to claims 21 and 26-29 above, and further in view of McClean et al (US 5,479,851).

Harrison in view of Knapp or Doering, Prudhomme or Nejat-Bina, and Rackov, shows the device claimed except a metal knife in the tube.

McClean shows that it is known to provide a metal knife in a feed tube, and it would have been obvious to one of ordinary skill in the art to adapt Harrison, as modified by Doering, Prudhomme or Nejat-Bina , and Rackov, with a metal knife

attached to the interior of the feed tube to more effectively cut the food/fruit items into smaller pieces.

4. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison in view of Knapp Doering, Prudhomme or Nejat-Bina , and Rackov as applied to claims 21 and 26-29 above, and further in view of Tseng et al (US 6,397,736).

Harrison in view of Knapp or Doering, Prudhomme or Nejat-Bina, and Rackov, shows the device claimed except a dent for receiving a locking bar.

Tseng shows a juicing device with a cap having a dent for receiving a locking bar (see Figure 1).

In view of Tseng, it would have been obvious to one of ordinary skill in the art to adapt Harrison, as modified by Doering, Prudhomme or Nejat-Bina, and Rackov, with a dent and a locking bar to safely and securely close the cap over the juicing device.

Response to Arguments

5. Applicant's arguments, along with the affidavit by Mr. Richard Hoare, filed 2/2/11 have been fully considered but they are not persuasive.

The applicant has presented the affidavit of Mr. Hoare to support the non-obviousness of the present invention based on the commercial success of the present invention and the evidence of the commercial copying and acquiescence. In review of the affidavit, page 4, [014], that the sale of the juicers that were sold with metal feed is $AU229,076,886 whereas the juicers without metal tube is $AU275,355,231. Based on these sales, the juicer with metal feed has sold about 20% more than that of the juicers without metal tube. While the increase of about 20% is not a small amount, it is unclear

if such increase is sufficient enough to render that the commercial success is solely based on the presently claimed invention of the recited polymeric cap and the metal feed tube. This observation is further noted because the affidavit also states that the long felt need of the product was solved by an introduction of a triangular knife that is attached to the feed tube and further notes the product that is distinguished with the product that is made with a steel knife and a plastic knife as stated in page 7, [032]. Thus, it is unclear if the commercial success is based on the presently claimed product the claimed structure of the polymeric cap and the feed tube with the flange and the gasket or that the commercial success is based some other aspects not claimed in the present invention.

With respect to the evidence of commercial copying and acquiescence, it is noted such copying would not automatically confirm the non-obviousness of the invention. See MPEP 2144.05 III. Also with respect to acquiescence by a competitor, the MPEP 2144.01 III further notes that a licensing to a competitor is not sufficient to show nexus between the merits of the invention and the license and that it fails to establish a secondary consideration of commercial success. Since an acquiescence can be had based on an agreed license, the competitor's acquiescence is not deemed to establish the non-obviousness of the present invention.

Based on these observations made in the affidavit, the applicant's arguments are not deemed persuasive.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SANG Y. PAIK whose telephone number is (571) 272-4783. The examiner can normally be reached on M-F (9:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on (571) 272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SANG Y PAIK/

Primary Examiner, Art Unit 3742